



State of Wisconsin
2009 - 2010 LEGISLATURE

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2009 ASSEMBLY BILL 879

d-note

March 23, 2010 - Introduced by Representatives SUDER, RIPP, J. FITZGERALD, GOTTLIEB, KLEEFISCH, STRACHOTA, KNODL, MONTGOMERY, DAVIS, ZIPPERER, ROTH, MURSAU, PETERSEN, PETROWSKI, ZIEGELBAUER, TOWNSEND, VOS, PRIDEMORE, RHOADES, BROOKS, HUEBSCH, SPANBAUER, LEMAHIEU, M. WILLIAMS, GUNDERSON, KRAMER, NYGREN, STONE, NERISON, MEYER, BALLWEG, BIES, NASS, HONADEL, MURTHA, J. OTT and LOTHIAN, cosponsored by Senators LEIBHAM, LAZICH, DARLING, S. FITZGERALD, HOPPER, A. LASEE, KEDZIE and HARS DORF. Referred to Committee on Corrections and the Courts.

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1 AN ACT ~~to repeal~~ 20.410 (1) (ds), 301.068, 302.042, 302.045 (3m) (d), 302.05 (3)
2 (c) 3., 302.113 (2) (b), 302.113 (2) (c), 302.113 (3) (e), 302.113 (9h), 302.1135,
3 304.06 (1) (bg), 304.06 (1) (bk), 304.06 (1) (bn), 304.06 (1) (br), 973.01 (3d),
4 973.01 (4m), 973.031, 973.09 (3) (d) and 973.195 (1r) (j); **to renumber and**
5 **amend** 302.05 (1) and 302.113 (2) (a); **to amend** 15.01 (2), 15.06 (6), 15.145 (1),
6 17.07 (3m), 20.410 (2) (title), 20.410 (2) (a), 20.923 (4) (b) 6., 230.08 (2) (pd),
7 301.03 (3), 301.048 (2) (am) 3., 301.21 (1m) (c), 301.21 (2m) (c), 302.045 (1),
8 302.045 (3), 302.05 (title), 302.05 (2), 302.05 (3) (b), 302.05 (3) (c) 1., 302.05 (3)
9 (c) 2. (intro.), 302.05 (3) (d), 302.11 (1g) (b) (intro.), 302.11 (1g) (b) 2., 302.11 (1g)
10 (c), 302.11 (1g) (d), 302.11 (1m), 302.11 (7) (c), 302.113 (1), 302.113 (3) (d),
11 302.113 (7), 302.113 (9) (am), 302.113 (9) (b), 302.113 (9) (c), 302.114 (9) (am),
12 302.114 (9) (c), 304.01 (title), 304.01 (1), 304.01 (2) (intro.), 304.01 (2) (b), 304.01
13 (2) (c), 304.01 (2) (d), 304.06 (title), 304.06 (1) (b), 304.06 (1) (c) (intro.), 304.06
14 (1) (d) 1., 304.06 (1) (d) 2., 304.06 (1) (d) 3m., 304.06 (1) (d) 4., 304.06 (1) (e),

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304.06 (1) (eg), 304.06 (1) (em), 304.06 (1) (f), 304.06 (1) (g), 304.06 (1m) (intro.),
 304.06 (1q) (b), 304.06 (1q) (c), 304.06 (1x), 304.06 (2m) (d), 304.06 (3), 304.06
 (3e), 304.06 (3m), 304.071 (1), 801.50 (5), 809.30 (1) (c), 911.01 (4) (c), 950.04 (1v)
 (f), 950.04 (1v) (g), 950.04 (1v) (gm), 950.04 (1v) (nt), 973.01 (4), 973.01 (7),
 973.195 (1r) (a), 974.07 (4) (b), 976.03 (23) (c) and 977.05 (4) (jm); **to repeal and
 recreate** 302.045 (2) (d); and **to create** 302.05 (1) (am) 1., 302.05 (1) (am) 2.,
 302.05 (1) (b), 302.113 (9) (at) and 302.113 (9g) of the statutes; **relating to:**
 sentencing, revocation of parole or extended supervision, and requiring the
 exercise of rule-making authority.

the Subject

Analysis by the Legislative Reference Bureau

2009 Wisconsin Act 28 (the Act) made several changes to the adult correctional system, most of which took effect on October 1, 2009. Prior to the effective date of the provisions relating to the adult correctional system (pre-Act), a person who was imprisoned for a felony he or she committed prior to December 31, 1999, was allowed to petition the Parole Commission in the Department of Corrections (DOC) to be released to parole after the person served 25 percent of his or her sentence, or six months, whichever was greater. The Parole Commission determined whether, and under what conditions, the person should be released to parole. A person who committed a felony on or after December 31, 1999, is sentenced to a bifurcated sentence, with the first portion of the sentence served in confinement and the second portion served under extended supervision in the community.

Pre-Act, a person who was serving a bifurcated sentence was, with few exceptions, required to serve the entire confinement portion of his or her sentence before being released to extended supervision. A person's confinement portion could have been extended if he or she violated a prison regulation. If a person's confinement portion was extended for such a violation, the law pre-Act required his or her extended supervision portion to be reduced so that the total length of the person's sentence remained unchanged.

The law pre-Act allowed a person who is sentenced to a bifurcated sentence for a Class C to Class I felony to petition the sentencing court to adjust his or her sentence and release the person from prison to extended supervision if he or she has served 85 percent (for Class C to Class E felonies) or 75 percent (for Class F to Class I felonies) of the confinement portion of the sentence. If a person's confinement portion was reduced by the sentencing court, the law pre-Act required his or her extended supervision portion to be extended so that the total length of the person's sentence remained unchanged. Pre-Act, a person who was released to extended

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supervision was required to serve his or her entire sentence before extended supervision terminated.

The ~~Act~~ eliminates the role of the sentencing court in adjusting sentences and renamed the ~~Parole Commission~~ the ~~Earned Release Review Commission~~ (ERRC). The ~~Act~~ allows most persons who are incarcerated for a Class C to Class I felony to earn "positive adjustment time" toward early release from confinement. Under the ~~Act~~, the amount of positive adjustment time a person can earn varies depending on the classification of the felony, the person's history and likelihood of reoffending, and other factors determined by DOC.

The ~~Act~~ requires DOC to release the person to extended supervision when he or she serves his entire period of confinement, minus positive adjustment time earned. Under the ~~Act~~, if a person's period of confinement is reduced by positive adjustment time, his or her period of extended supervision is increased so that the length of the sentence does not change. The ~~Act~~ requires the ~~ERRC~~ to perform the duties previously performed by the ~~Parole Commission~~ and to review petitions for early release from confinement.

Pre-~~Act~~, persons who had committed most felonies were allowed to petition the sentencing court for release to extended supervision for the remaining term of his or her sentence if the person had a terminal condition, reached age 65 after serving at least five years of his or her term of confinement portion, or reached age 60 after serving at least ten years of his or her term of confinement portion.

Under the ~~Act~~, the petition may also be filed by a person with any serious health condition and must be submitted to ~~ERRC~~ instead of to the sentencing court. In addition, under the ~~Act~~, DOC may release to extended supervision any person serving the confinement portion of a bifurcated sentence if the person is not confined following a violent offense, the person is believed to be able to live in the community without assaulting another, and the release will not be more than 12 months before the date that the person otherwise would be eligible for release to extended supervision. If DOC releases a person, his or her term of extended supervision must be extended by the length of time he or she was originally sentenced to confinement so that the total length of the sentence does not change.

Pre-~~Act~~, if a person sentenced to a bifurcated sentence violated any condition of his or her release to extended supervision, the person's extended supervision was revoked, he or she was returned to prison, and the ~~Division of Hearings and Appeals~~ within ~~the Department of Administration~~ or DOC (reviewing authority) made a recommendation to the court that convicted the person as to how long the person should remain in prison. After it received the reviewing authority's recommendation, the court was allowed to order the person to remain in prison for a period ~~of time~~ that did not exceed the time remaining on his or her bifurcated sentence.

Under the ~~Act~~, the reviewing authority determines how long to imprison the person whose extended supervision is revoked and enters its own order for the person to remain in prison for a period ~~of time~~ that does not exceed the time remaining on his or her bifurcated sentence.

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This bill eliminates positive adjustment time, restores the ~~Parole~~ Commission, eliminates the ERRC, and returns the sentencing provisions, the provisions relating to early release from confinement, and the provisions relating to review of revocation of release to pre-~~Act law.~~ ~~STET~~

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 15.01 (2) of the statutes as affected by 2009 Wisconsin Act 28 is
2 amended to read:

3 15.01 (2) "Commission" means a 3-member governing body in charge of a
4 department or independent agency or of a division or other subunit within a
5 department, except for the Wisconsin waterways commission which shall consist of
6 5 members and the ~~earned-release-review~~ parole commission which shall consist of
7 8 members. A Wisconsin group created for participation in a continuing interstate
8 body, or the interstate body itself, shall be known as a "commission", but is not a
9 commission for purposes of s. 15.06. The ~~earned-release-review~~ parole commission
10 created under s. 15.145 (1) shall be known as a "commission", but is not a commission
11 for purposes of s. 15.06.

12 SECTION 2. 15.06 (6) of the statutes as affected by 2009 Wisconsin Act 28 is
13 amended to read:

14 15.06 (6) QUORUM. A majority of the membership of a commission constitutes
15 a quorum to do business, except that vacancies shall not prevent a commission from
16 doing business. This subsection does not apply to the ~~earned-release-review~~ parole
17 commission.

18 SECTION 3. 15.145 (1) of the statutes as affected by 2009 Wisconsin Act 28 is
19 amended to read:

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1 15.145 (1) ~~EARNED RELEASE REVIEW~~ PAROLE COMMISSION. There is created in the
2 department of corrections ~~an earned release review~~ a parole commission consisting
3 of 8 members. Members shall have knowledge of or experience in corrections or
4 criminal justice. The members shall include a chairperson who is nominated by the
5 governor, and with the advice and consent of the senate appointed, for a 2-year term
6 expiring March 1 of the odd-numbered years, subject to removal under s. 17.07 (3m),
7 and the remaining members in the classified service appointed by the chairperson.

8 **SECTION 4.** 17.07 (3m) of the statutes, as affected by 2009 Wisconsin Act 28, is
9 amended to read:

10 17.07 (3m) Notwithstanding sub. (3), the ~~earned release review~~ parole
11 ~~commission chairperson~~ may be removed by the governor, at pleasure.

12 **SECTION 5.** 20.410 (1) (ds) of the statutes, as affected by 2009 Wisconsin Act 28,
13 is repealed.

14 **SECTION 6.** 20.410 (2) (title) of the statutes, as affected by 2009 Wisconsin Act
15 28, is amended to read:

16 20.410 (2) (title) ~~EARNED RELEASE REVIEW~~ PAROLE COMMISSION.

17 *Subject note*
SECTION 7. 20.410 (2) (a) of the statutes, as affected by 2009 Wisconsin Act 28,
18 is amended to read:

19 20.410 (2) (a) *General program operations*. The amounts in the schedule for
20 the general program operations of the ~~earned release review~~ parole commission.

21 *Subject note*
SECTION 8. 20.923 (4) (b) 6. of the statutes, as affected by 2009 Wisconsin Act
22 28, is amended to read:

23 20.923 (4) (b) 6. ~~Earned release review~~ Parole commission: chairperson.

24 *Subject note*
SECTION 9. 230.08 (2) (pd) of the statutes, as affected by 2009 Wisconsin Act 28,
25 is amended to read:

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1 230.08 (2) (pd) The chairperson of the ~~earned release review~~ parole
2 commission.

3 **SECTION 10.** 301.03 (3) of the statutes, as affected by 2009 Wisconsin Act 28,
4 is amended to read:

5 301.03 (3) Administer parole, extended supervision, and probation matters,
6 except that the decision to grant or deny parole ~~or to grant extended supervision~~
7 ~~under s. 304.06 (1) to inmates shall be made by the earned release review~~ parole
8 commission and the decision to revoke probation, extended supervision or parole in
9 cases in which there is no waiver of the right to a hearing shall be made by the
10 division of hearings and appeals in the department of administration. The secretary
11 may grant special action parole releases under s. 304.02. The department may
12 ~~discharge inmates from extended supervision under s. 973.01 (4m) and may modify~~
13 ~~a bifurcated sentence under s. 302.113 (9h), and the earned release review~~
14 ~~commission may modify a sentence under s. 302.1135.~~ The department shall
15 promulgate rules establishing a drug testing program for probationers, parolees and
16 persons placed on extended supervision. The rules shall provide for assessment of
17 fees upon probationers, parolees and persons placed on extended supervision to
18 partially offset the costs of the program.

19 **SECTION 11.** 301.048 (2) (am) 3. of the statutes, as affected by 2009 Wisconsin
20 Act 28, is amended to read:

21 301.048 (2) (am) 3. The ~~earned release review~~ parole commission grants him
22 or her parole under s. 304.06 and requires his or her participation in the program as
23 a condition of parole under s. 304.06 (1x).

24 **SECTION 12.** 301.068 of the statutes, as affected by 2009 Wisconsin Act 28, is
25 repealed.

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1 **SECTION 13.** 301.21 (1m) (c) of the statutes, as affected by 2009 Wisconsin Act
2 28, is amended to read:

3 301.21 (1m) (c) Any hearing to consider parole ~~or whether to grant extended~~
4 ~~supervision, if the inmate is sentenced under s. 973.01~~ to which an inmate confined
5 under this contract may be entitled by the laws of Wisconsin will be conducted by the
6 Wisconsin ~~earned release review~~ parole commission under rules of the department.

7 **SECTION 14.** 301.21 (2m) (c) of the statutes, as affected by 2009 Wisconsin Act
8 28, is amended to read:

9 301.21 (2m) (c) Any hearing to consider parole ~~or whether to grant extended~~
10 ~~supervision, if the prisoner is sentenced under s. 973.01~~ to which a prisoner confined
11 under a contract under this subsection may be entitled by the laws of Wisconsin shall
12 be conducted by the Wisconsin ~~earned release review~~ parole commission under rules
13 of the department.

14 **SECTION 15.** 302.042 of the statutes, as affected by 2009 Wisconsin Act 28, is
15 repealed.

16 **SECTION 16.** 302.045 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
17 is amended to read:

18 302.045 (1) PROGRAM. The department shall provide a challenge incarceration
19 program for inmates selected to participate under sub. (2). The program shall
20 provide participants with manual labor, personal development counseling,
21 substance abuse treatment and education, military drill and ceremony, counseling,
22 and strenuous physical exercise, for participants who have not attained the age of
23 30 as of the date on which they begin participating in the program, or
24 age-appropriate strenuous physical exercise, for all other participants, in
25 preparation for release on parole or extended supervision. ~~The program shall~~

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1 ~~provide, according to each participant's needs as assessed under sub. (2) (d),~~
2 ~~substance abuse treatment and education, including intensive intervention when~~
3 ~~indicated, personal development counseling, education, employment readiness~~
4 ~~training, and other treatment options that are directly related to the participant's~~
5 ~~criminal behavior.~~ The department shall design the program to include not ~~less~~ ^{fewer} than
6 50 participants at a time and so that a participant may complete the program in not
7 more than 180 days. The department may restrict participant privileges as
8 necessary to maintain discipline.

9 SECTION 17. 302.045 (2) (d) of the statutes, as affected by 2009 Wisconsin Act
10 28, is repealed and recreated to read:

11 302.045 (2) (d) The department determines, during assessment and
12 evaluation, that the inmate has a substance abuse problem.

13 SECTION 18. 302.045 (3) ^x of the statutes, as affected by 2009 Wisconsin Act 28,
14 is amended to read:

15 302.045 (3) PAROLE ELIGIBILITY. Except as provided in sub. (4), if the department
16 determines that an inmate serving a sentence other than one imposed under s.
17 973.01 has successfully completed the challenge incarceration program, the earned
18 ~~release review~~ parole commission shall parole the inmate for that sentence under s.
19 304.06, regardless of the time the inmate has served. When the ~~earned release~~
20 ~~review~~ parole commission grants parole under this subsection, it must require the
21 parolee to participate in an intensive supervision program ~~appropriate to the~~
22 ~~parolee's rehabilitation needs for drug abusers~~ as a condition of parole.

23 SECTION 19. 302.045 (3m) (d) of the statutes, as affected by 2009 Wisconsin Act
24 28, is repealed.

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1 **SECTION 20.** 302.05 (title) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is amended to read:

3 **302.05 (title) Wisconsin earned release substance abuse program.**

4 **SECTION 21.** 302.05 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
5 is renumbered 302.05 (1) (am) (intro.) and amended to read:

6 **302.05 Wisconsin earned release program.** (1) (am) (intro.) The
7 department of corrections shall, at any correctional facility the department
8 determines is appropriate, provide a rehabilitation program for inmates for the
9 purposes of the earned release program described in sub. (3). and the department of
10 health services may designate a section of a mental health institute as a correctional
11 treatment facility for the treatment of substance abuse of inmates transferred from
12 Wisconsin state prisons. This section shall be administered by the department of
13 corrections and shall be known as the Wisconsin substance abuse program. The
14 department of corrections and the department of health services shall ensure that
15 the residents at the institution and the residents in the substance abuse program:

16 **SECTION 22.** 302.05 (1) (am) 1. of the statutes is created to read:

17 302.05 (1) (am) 1. Have access to all facilities that are available at the
18 institution and are necessary for the treatment programs designed by the
19 departments.

20 **SECTION 23.** 302.05 (1) (am) 2. of the statutes is created to read:

21 302.05 (1) (am) 2. Are housed on separate wards.

22 **SECTION 24.** 302.05 (1) (b) of the statutes is created to read:

23 302.05 (1) (b) The department of corrections and the department of health
24 services shall, at any correctional facility the departments determine is appropriate,

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SECTION 24

1 provide a substance abuse treatment program for inmates for the purposes of the
2 earned release program described in sub. (3).

3 SECTION 25. 302.05 (2) of the statutes, as affected by 2009 Wisconsin Act 28,
4 is amended to read:

5 302.05 (2) Transfer to a correctional treatment facility for ~~participation in a~~
6 ~~program described in sub. (1)~~ the treatment of substance abuse shall be considered
7 a transfer under s. 302.18.

8 SECTION 26. 302.05 (3) (b) of the statutes, as affected by 2009 Wisconsin Act 28,
9 is amended to read:

10 302.05 (3) (b) Except as provided in par. (d), if the department determines that
11 an eligible inmate serving a sentence other than one imposed under s. 973.01 has
12 successfully completed a ~~rehabilitation~~ treatment program described in sub. (1), the
13 ~~earned release review~~ parole commission shall parole the inmate for that sentence
14 under s. 304.06, regardless of the time the inmate has served. If the ~~earned release~~
15 ~~review~~ parole commission grants parole under this paragraph, it shall require the
16 parolee to participate in an intensive supervision program ~~appropriate to the~~
17 ~~parolee's rehabilitation needs for drug abusers~~ as a condition of parole.

18 SECTION 27. 302.05 (3) (c) 1. of the statutes, as affected by 2009 Wisconsin Act
19 28, is amended to read:

20 302.05 (3) (c) 1. Except as provided in par. (d), if the department determines
21 that an eligible inmate serving the term of confinement in prison portion of a
22 bifurcated sentence imposed under s. 973.01 has successfully completed a
23 ~~rehabilitation~~ treatment program described in sub. (1), the department shall inform
24 the court that sentenced the inmate.

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1 **SECTION 28.** 302.05 (3) (c) 2. (intro.) of the statutes, as affected by 2009
2 Wisconsin Act 28, is amended to read:

3 302.05 (3) (c) 2. (intro.) Upon being informed by the department under subd.
4 1. that an inmate whom the court sentenced under s. 973.01 has successfully
5 completed a ~~rehabilitation~~ treatment program described in sub. (1), the court shall
6 modify the inmate's bifurcated sentence as follows:

7 **SECTION 29.** 302.05 (3) (c) 3. of the statutes is repealed.

8 **SECTION 30.** 302.05 (3) (d) of the statutes, as affected by 2009 Wisconsin Act 28,
9 is amended to read:

10 302.05 (3) (d) The department may place intensive sanctions program
11 participants in a ~~rehabilitation~~ treatment program described in sub. (1), but pars. (b)
12 and (c) do not apply to those participants.

13 **SECTION 31.** 302.11 (1g) (b) (intro.) of the statutes, as affected by 2009
14 Wisconsin Act 28, is amended to read:

15 302.11 (1g) (b) (intro.) Before an incarcerated inmate with a presumptive
16 mandatory release date reaches the presumptive mandatory release date specified
17 under par. (am), the ~~earned release review~~ parole commission shall proceed under
18 s. 304.06 (1) to consider whether to deny presumptive mandatory release to the
19 inmate. If the ~~earned release review~~ parole commission does not deny presumptive
20 mandatory release, the inmate shall be released on parole. The ~~earned release~~
21 ~~review~~ parole commission may deny presumptive mandatory release to an inmate
22 only on one or more of the following grounds:

23 **SECTION 32.** 302.11 (1g) (b) 2. of the statutes, as affected by 2009 Wisconsin Act
24 28, is amended to read:

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1 302.11 (1g) (b) 2. Refusal by the inmate to participate in counseling or
2 treatment that the social service and clinical staff of the institution determines is
3 necessary for the inmate, including pharmacological treatment using an
4 antiandrogen or the chemical equivalent of an antiandrogen if the inmate is a serious
5 child sex offender as defined in s. 304.06 (1q) (a). The ~~earned release review~~ parole
6 commission may not deny presumptive mandatory release to an inmate because of
7 the inmate's refusal to participate in a rehabilitation program under s. 301.047.

8 **SECTION 33.** 302.11 (1g) (c) of the statutes, as affected by 2009 Wisconsin Act
9 28, is amended to read:

10 302.11 (1g) (c) If the ~~earned release review~~ parole commission denies
11 presumptive mandatory release to an inmate under par. (b), the ~~earned release~~
12 ~~review~~ parole commission shall schedule regular reviews of the inmate's case to
13 consider whether to parole the inmate under s. 304.06 (1).

14 **SECTION 34.** 302.11 (1g) (d) of the statutes, as affected by 2009 Wisconsin Act
15 28, is amended to read:

16 302.11 (1g) (d) An inmate may seek review of a decision by the ~~earned release~~
17 ~~review~~ parole commission relating to the denial of presumptive mandatory release
18 only by the common law writ of certiorari.

19 **SECTION 35.** 302.11 (1m) of the statutes, as affected by 2009 Wisconsin Act 28,
20 is amended to read:

21 302.11 (1m) An inmate serving a life term is not entitled to mandatory release.
22 Except as provided in ss. 939.62 (2m) (c) and 973.014, the ~~earned release review~~
23 parole commission may parole the inmate as specified in s. 304.06 (1).

24 **SECTION 36.** 302.11 (7) (c) of the statutes, as affected by 2009 Wisconsin Act 28,
25 is amended to read:

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302.11 (7) (c) The ~~earned release review parole~~ commission may subsequently parole, under s. 304.06 (1), and the department may subsequently parole, under s. 304.02, a parolee who is returned to prison for violation of a condition of parole.

SECTION 37. 302.113 (1) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

302.113 (1) An inmate is subject to this section if he or she is serving a bifurcated sentence imposed under s. 973.01. ~~An inmate convicted of a misdemeanor or of a Class F to Class I felony that is not a violent offense, as defined in s. 301.048 (2) (bm) 1., and who is eligible for positive adjustment time under sub. (2) (b) pursuant to s. 973.01 (3d) (b) may be released to extended supervision under sub. (2) (b) or (9h).~~ An inmate convicted of a Class C to Class E felony or a Class F to Class I felony that is a violent offense, as defined in s. 301.048 (2) (bm) 1., or a Class F to Class I felony that is not a violent offense, as defined under s. 301.048 (2) (bm) 1., but who is ineligible for positive adjustment time under sub. (2) (b) pursuant to s. 973.01 (3d) (b) may be released to extended supervision only under sub. (2) (a) or (9h) or s. 304.06.

SECTION 38. 302.113 (2) (a) of the statutes, as affected by 2009 Wisconsin Act 28, is renumbered 302.113 (2) and amended to read:

302.113 (2) Except as provided in ~~par. (b)~~ and subs. (3) and (9) and s. 304.06, an inmate subject to this section is entitled to release to extended supervision after he or she has served the term of confinement in prison portion of the sentence imposed under s. 973.01, ~~as modified by the department under sub. (9h), as modified under s. 302.1135 by the earned release review commission in the manner specified in s. 302.1135 (6) (a), or as modified by the sentencing court under sub. (9g) or s. 302.045 (3m) (b) 1., 302.05 (3) (c) 2. a., or 973.195 (1r), if applicable.~~

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SECTION 39

1 **SECTION 39.** 302.113 (2) (b) of the statutes, as affected by 2009 Wisconsin Act
2 (28), is repealed.

3 **SECTION 40.** 302.113 (2) (c) of the statutes, as affected by 2009 Wisconsin Act
4 (28), is repealed.

5 **SECTION 41.** 302.113 (3) (d) of the statutes, as affected by 2009 Wisconsin Act
6 (28), is amended to read:

7 302.113 (3) (d) If the term of confinement in prison portion of a bifurcated
8 sentence for a ~~Class B felony~~ is increased under this subsection, the term of extended
9 supervision is reduced so that the total length of the bifurcated sentence does not
10 change.

11 **SECTION 42.** 302.113 (3) (e) of the statutes, as affected by 2009 Wisconsin Act
12 (28), is repealed.

13 **SECTION 43.** 302.113 (7) of the statutes, as affected by 2009 Wisconsin Act 28,
14 is amended to read:

15 302.113 (7) Any inmate released to extended supervision under this section is
16 subject to all conditions and rules of extended supervision until the expiration of the
17 term of extended supervision portion of the bifurcated sentence or until the
18 department discharges the inmate under s. 973.01 (4m), whichever is appropriate.
19 The department may set conditions of extended supervision in addition to any
20 conditions of extended supervision required under s. 302.116, if applicable, or set by
21 the court under sub. (7m) or s. 973.01 (5) if the conditions set by the department do
22 not conflict with the court's conditions.

23 **SECTION 44.** 302.113 (9) (am) of the statutes, as affected by 2009 Wisconsin Act
24 (28), is amended to read:

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1 302.113 (9) (am) If a person released to extended supervision under this section
2 ~~or under s. 302.1135~~ violates a condition of extended supervision, the reviewing
3 authority may revoke the extended supervision of the person. If the extended
4 supervision of the person is revoked, the ~~reviewing authority~~ person shall be
5 returned to the circuit court for the county in which the person was convicted of the
6 offense for which he or she was on extended supervision, and the court shall order
7 the person to be returned to prison for any specified period of time that does not
8 exceed the time remaining on the bifurcated sentence. The time remaining on the
9 bifurcated sentence is the total length of the bifurcated sentence, less time served by
10 the person in confinement under the sentence before release to extended supervision
11 under sub. (2) and less all time served in confinement for previous revocations of
12 extended supervision under the sentence. The order returning a person to prison
13 under this paragraph shall provide the person whose extended supervision was
14 revoked with credit in accordance with ss. 304.072 and 973.155.

15 **SECTION 45.** 302.113 (9) (at) of the statutes, as affected by 2009 Wisconsin Act
16 (28) is created to read:

17 302.113 (9) (at) When a person is returned to court under par. (am) after
18 revocation of extended supervision, the reviewing authority shall make a
19 recommendation to the court concerning the period of time for which the person
20 should be returned to prison. The recommended time period may not exceed the time
21 remaining on the bifurcated sentence, as calculated under par. (am).

22 **SECTION 46.** 302.113 (9) (b) of the statutes, as affected by 2009 Wisconsin Act
23 (28) is amended to read:

24 302.113 (9) (b) A person who is returned to prison after revocation of extended
25 supervision shall be incarcerated for the entire period of time specified by the order

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1 court under par. (am). The period of time specified under par. (am) may be extended
2 in accordance with sub. (3). If a person is returned to prison under par. (am) for a
3 period of time that is less than the time remaining on the bifurcated sentence, the
4 person shall be released to extended supervision after he or she has served the period
5 of time specified by the ~~order~~ court under par. (am) and any periods of extension
6 imposed in accordance with sub. (3).

7 **SECTION 47.** 302.113 (9) (c) of the statutes, as affected by 2009 Wisconsin Act
8 (28), is amended to read:

9 302.113 (9) (c) A person who is subsequently released to extended supervision
10 after service of the period of time specified by the ~~order~~ court under par. (am) is
11 subject to all conditions and rules under ^{Sub.} ~~sub.~~ (7) and, if applicable, ^{Sub.} ~~(7m)~~ until the
12 expiration of the remaining extended supervision portion of the bifurcated sentence
13 ~~or until the department discharges the person under s. 973.01 (4m), whichever is~~
14 ~~appropriate.~~ The remaining extended supervision portion of the bifurcated sentence
15 is the total length of the bifurcated sentence, less the time served by the person in
16 confinement under the bifurcated sentence before release to extended supervision
17 under sub. (2) and less all time served in confinement for previous revocations of
18 extended supervision under the bifurcated sentence.

19 **SECTION 48.** 302.113 (9g) of the statutes is created to read:

20 302.113 (9g) (a) In this subsection:

21 1. "Program review committee" means the committee at a correctional
22 institution that reviews the security classifications, institution assignments, and
23 correctional programming assignments of inmates confined in the institution.

24 2. "Terminal condition" means an incurable condition afflicting a person,
25 caused by injury, disease, or illness, as a result of which the person has a medical

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1 prognosis that his or her life expectancy is 6 months or less, even with available
2 life-sustaining treatment provided in accordance with the prevailing standard of
3 medical care.

4 (b) An inmate who is serving a bifurcated sentence for a crime other than a
5 Class B felony may seek modification of the bifurcated sentence in the manner
6 specified in par. (f) if he or she meets one of the following criteria:

7 1. The inmate is 65 years of age or older and has served at least 5 years of the
8 term of confinement in prison portion of the bifurcated sentence.

9 2. The inmate is 60 years of age or older and has served at least 10 years of the
10 term of confinement in prison portion of the bifurcated sentence.

11 3. The inmate has a terminal condition.

12 (c) An inmate who meets the criteria ^{a criterion} under par. (b) may submit a petition to
13 the program review committee at the correctional institution in which the inmate is
14 confined requesting a modification of the inmate's bifurcated sentence in the manner
15 specified in par. (f). If the inmate alleges in the petition that he or she has a terminal
16 condition, the inmate shall attach to the petition affidavits from 2 physicians setting
17 forth a diagnosis that the inmate has a terminal condition.

18 (cm) If, after receiving the petition under par. (c), the program review
19 committee determines that the public interest would be served by a modification of
20 the inmate's bifurcated sentence in the manner provided under par. (f), the
21 committee shall approve the petition for referral to the sentencing court and notify
22 the department of its approval. The department shall then refer the inmate's
23 petition to the sentencing court and request the court to conduct a hearing on the
24 petition. If the program review committee determines that the public interest would

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1 not be served by a modification of the inmate's bifurcated sentence in the manner
2 specified in par. (f), the committee shall deny the inmate's petition.

3 *Schedule* (d) When a court is notified by the department that it is referring to the court
4 an inmate's petition for modification of the inmate's bifurcated sentence, the court

5 shall ~~set~~ *have* a hearing to determine whether the public interest would be served by a
6 modification of the inmate's bifurcated sentence in the manner specified in par. (f).

7 The inmate and the district attorney have the right to be present at the hearing, and
8 any victim of the inmate's crime has the right to be present at the hearing and to
9 provide a statement concerning the modification of the inmate's bifurcated sentence.

10 The court shall order such notice of the hearing date as it considers adequate to be
11 given to the department, the inmate, the attorney representing the inmate, if
12 applicable, and the district attorney. Victim notification shall be provided as
13 specified under par. (g).

14 (e) At a hearing ~~set~~ *scheduled* under par. (d), the inmate has the burden of proving
15 by the greater weight of the credible evidence that a modification of the bifurcated
16 sentence in the manner specified in par. (f) would serve the public interest. If the
17 inmate proves that a modification of the bifurcated sentence in the manner specified
18 in par. (f) would serve the public interest, the court shall modify the inmate's
19 bifurcated sentence in that manner. If the inmate does not prove that a modification
20 of the bifurcated sentence in the manner specified in par. (f) would serve the public
21 interest, the court shall deny the inmate's petition for modification of the bifurcated
22 sentence.

23 (f) A court may modify an inmate's bifurcated sentence under this section only
24 as follows:

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1 1. The court shall reduce the term of confinement in prison portion of the
2 inmate's bifurcated sentence in a manner that provides for the release of the inmate
3 to extended supervision within 30 days after the date on which the court issues its
4 order modifying the bifurcated sentence.

5 2. The court shall lengthen the term of extended supervision imposed so that
6 the total length of the bifurcated sentence originally imposed does not change.

7 (g) 1. In this paragraph, "victim" has the meaning given in s. 950.02 (4).✓

schedules
8 2. When a court ~~sets~~ a hearing date under par. (d), the clerk of the circuit court
9 shall send a notice of hearing to the victim of the crime committed by the inmate, if
10 the victim has submitted a card under subd. 3. requesting notification. The notice
11 shall inform the victim that he or she may appear at the hearing ~~scheduled~~ under
12 par. (d) and shall inform the victim of the manner in which he or she may provide a
13 statement concerning the modification of the inmate's bifurcated sentence in the
14 manner provided in par. (f). The clerk of the circuit court shall make a reasonable
15 attempt to send the notice of hearing to the last-known address of the inmate's
16 victim, postmarked at least 10 days before the date of the hearing.

17 3. The director of state courts shall design and prepare cards for a victim to send
18 to the clerk of the circuit court for the county in which the inmate was convicted and
19 sentenced. The cards shall have space for a victim to provide his or her name and
20 address, the name of the applicable inmate, and any other information that the
21 director of state courts determines is necessary. The director of state courts shall
22 provide the cards, without charge, to clerks of circuit court. Clerks of circuit court
23 shall provide the cards, without charge, to victims. Victims may send completed
24 cards to the clerk of the circuit court for the county in which the inmate was convicted

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1 and sentenced. All court records or portions of records that relate to mailing
2 addresses of victims are not subject to inspection or copying under s. 19.35 (1).

3 (h) An inmate may appeal a court's decision to deny the inmate's petition for
4 modification of his or her bifurcated sentence. The state may appeal a court's
5 decision to grant an inmate's petition for a modification of the inmate's bifurcated
6 sentence. In an appeal under this paragraph, the appellate court may reverse a
7 decision granting or denying a petition for modification of a bifurcated sentence only
8 if it determines that the sentencing court erroneously exercised its discretion in
9 granting or denying the petition.

10 (i) If the program review committee denies an inmate's petition under par. (cm),
11 the inmate may not file another petition within one year after the date of the program
12 review committee's denial. If the program review committee approves an inmate's
13 petition for referral to the sentencing court under par. (cm) but the sentencing court
14 denies the petition, the inmate may not file another petition under par. (cm) within
15 one year after the date of the court's decision.

16 (j) An inmate eligible to seek modification of his or her bifurcated sentence
17 under this subsection has a right to be represented by counsel in proceedings under
18 this subsection. An inmate, or the department on the inmate's behalf, may apply to
19 the state public defender for determination of indigency and appointment of counsel
20 under s. 977.05 (4) (jm) before or after the filing of a petition with the program review
21 committee under par. (c).[✓] If an inmate whose petition has been referred to the court
22 under par. (cm) is without counsel, the court shall refer the matter to the state public
23 defender for determination of indigency and appointment of counsel under s. 977.05
24 (4) (jm).

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1 **SECTION 49.** 302.113 (9h) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is repealed.

3 **SECTION 50.** 302.1135 of the statutes, as affected by 2009 Wisconsin Act 28, is
4 repealed.

5 **SECTION 51.** 302.114 (9) (am) of the statutes, as affected by 2009 Wisconsin Act
6 (28), is amended to read:

7 302.114 (9) (am) If a person released to extended supervision under this section
8 or under s. ~~302.1135~~ 302.113 (9g) violates a condition of extended supervision, the
9 reviewing authority may revoke the extended supervision of the person. If the
10 extended supervision of the person is revoked, the person shall be returned to the
11 circuit court for the county in which the person was convicted of the offense for which
12 he or she was on extended supervision, and the court shall order the person to be
13 returned to prison for a specified period of time before he or she is eligible for being
14 released again to extended supervision. The period of time specified under this
15 paragraph may not be less than 5 years and may be extended in accordance with sub.
16 (3).

17 **SECTION 52.** 302.114 (9) (c) of the statutes, as affected by 2009 Wisconsin Act
18 (28), is amended to read:

19 302.114 (9) (c) A person who is subsequently released to extended supervision
20 under par. (bm) is subject to all conditions and rules under sub. (8) until the
21 expiration of the sentence ^{plain space} ~~or until the department discharges the person under s.~~
22 ~~973.01 (4m), whichever is appropriate.~~

23 **SECTION 53.** 304.01 (title) of the statutes, as affected by 2009 Wisconsin Act 28,
24 is amended to read:

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SECTION 53

1 **304.01** (title) ~~Earned release review~~ Parole commission and
2 **commission chairperson; general duties.**

3 **SECTION 54.** 304.01 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
4 is amended to read:

5 304.01 (1) The chairperson of the ~~earned release review~~ parole commission
6 shall administer and supervise the commission and its activities and shall be the
7 final ~~parole~~ granting authority ~~for granting parole or release to extended~~
8 ~~supervision~~, except as provided in s. 304.02.

9 **SECTION 55.** 304.01 (2) (intro.) of the statutes, as affected by 2009 Wisconsin
10 Act 28, is amended to read:

11 304.01 (2) (intro.) The ~~earned release review~~ parole commission shall conduct
12 regularly scheduled interviews to consider the parole ~~or release to extended~~
13 ~~supervision~~ of eligible inmates of the adult correctional institutions under the
14 control of the department of corrections, eligible inmates transferred under ch. 51
15 and under the control of the department of health services and eligible inmates in
16 any county house of correction. The department of corrections shall provide all of the
17 following to the ~~earned release review~~ parole commission:

18 **SECTION 56.** 304.01 (2) (b) of the statutes, as affected by 2009 Wisconsin Act 28,
19 is amended to read:

20 304.01 (2) (b) Scheduling assistance for parole interviews for prisoners who
21 ~~have applied for parole or release to extended supervision~~ at the correctional
22 institutions.

23 **SECTION 57.** 304.01 (2) (c) of the statutes, as affected by 2009 Wisconsin Act 28,
24 is amended to read:

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1 304.01 (2) (c) Clerical support related to the interviews for prisoners who have
2 ~~applied for parole or release to extended supervision.~~

3 **SECTION 58.** 304.01 (2) (d) of the statutes, as affected by 2009 Wisconsin Act 28,
4 is amended to read:

5 304.01 (2) (d) Appropriate physical space at the correctional institutions to
6 conduct the parole interviews for prisoners who have ~~applied for parole or release to~~
7 ~~extended supervision.~~

8 **SECTION 59.** 304.06 (title) of the statutes, as affected by 2009 Wisconsin Act 28,
9 is amended to read:

10 **304.06 (title) ~~Release to parole or extended supervision~~ Paroles from**
11 **state prisons and house of correction.**

12 **SECTION 60.** 304.06 (1) (b) of the statutes, as affected by 2009 Wisconsin Act 28,
13 is amended to read:

14 304.06 (1) (b) Except as provided in s. 961.49 (2), 1999 stats., sub. (1m) or s.
15 302.045 (3), 302.05 (3) (b), 973.01 (6), or 973.0135, the earned release review parole
16 commission may parole an inmate of the Wisconsin state prisons or any felon or any
17 person serving at least one year or more in a county house of correction or a county
18 reforestation camp organized under s. 303.07, when he or she has served 25% of the
19 sentence imposed for the offense, or 6 months, whichever is greater. Except as
20 provided in s. 939.62 (2m) (c) or 973.014 (1) (b) or (c), (1g) or (2), the earned release
21 review parole commission may parole an inmate serving a life term when he or she
22 has served 20 years, as modified by the formula under s. 302.11 (1) and subject to
23 extension under s. 302.11 (1q) and (2), if applicable. The person serving the life term
24 shall be given credit for time served prior to sentencing under s. 973.155, including
25 good time under s. 973.155 (4). The secretary may grant special action parole

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SECTION 60

1 releases under s. 304.02. The department or the ~~earned release review parole~~
2 commission shall not provide any convicted offender or other person sentenced to the
3 department's custody any parole eligibility or evaluation ~~for parole or release to~~
4 ~~extended supervision~~ until the person has been confined at least 60 days following
5 sentencing.

6 **SECTION 61.** 304.06 (1) (bg) of the statutes, as affected by 2009 Wisconsin Act
7 28, is repealed.

8 **SECTION 62.** 304.06 (1) (bk) of the statutes, as affected by 2009 Wisconsin Act
9 28, is repealed.

10 **SECTION 63.** 304.06 (1) (bn) of the statutes, as affected by 2009 Wisconsin Act
11 28, is repealed.

12 **SECTION 64.** 304.06 (1) (br) of the statutes, as affected by 2009 Wisconsin Act
13 28, is repealed.

14 **SECTION 65.** 304.06 (1) (c) (intro.) of the statutes, as affected by 2009 Wisconsin
15 Act 28, is amended to read:

16 304.06 (1) (c) (intro.) If an inmate applies for parole ~~or release to extended~~
17 ~~supervision~~ under this subsection, the ~~earned release review parole~~ commission
18 shall make a reasonable attempt to notify the following, if they can be found, in
19 accordance with par. (d):

20 **SECTION 66.** 304.06 (1) (d) 1. of the statutes, as affected by 2009 Wisconsin Act
21 28, is amended to read:

22 304.06 (1) (d) 1. The notice under par. (c) shall inform the offices and persons
23 under par. (c) 1. to 3. of the manner in which they may provide written statements
24 under this subsection, shall inform persons under par. (c) 3. of the manner in which
25 they may attend interviews or hearings and make statements under par. (eg) and

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1 shall inform persons under par. (c) 3. who are victims, or family members of victims,
2 of crimes specified in s. 940.01, 940.03, 940.05, 940.225 (1), ^{or} (2), ^{plain} or (3) ^{or} (2), 948.02
3 (1) or (2), 948.025, 948.06 [§] or 948.07 of the manner in which they may have direct
4 input in the decision-making process under par. (em) ~~for parole or release to~~
5 ~~extended supervision~~. The ~~earned release review~~ parole commission shall provide
6 notice under this paragraph for an inmate's first application for parole ~~or release to~~
7 ~~extended supervision~~ and, upon request, for subsequent applications for parole ~~or~~
8 ~~release to extended supervision~~.

9 **SECTION 67.** 304.06 (1) (d) 2. of the statutes, as affected by 2009 Wisconsin Act
10 (28), is amended to read:

11 304.06 (1) (d) 2. The notice shall be by 1st class mail to an office's or a person's
12 last-known address sent at least 3 weeks before the interview or hearing upon the
13 application for parole ~~or release to extended supervision~~.

14 **SECTION 68.** 304.06 (1) (d) 3m. of the statutes, as affected by 2009 Wisconsin
15 Act 28, is amended to read:

16 304.06 (1) (d) 3m. If applicable, the notice shall state the manner in which the
17 person may have direct input in the decision-making process for parole ~~or release~~
18 ~~to extended supervision~~.

19 **SECTION 69.** 304.06 (1) (d) 4. of the statutes, as affected by 2009 Wisconsin Act
20 (28), is amended to read:

21 304.06 (1) (d) 4. If the notice is for a first application for parole ~~or release to~~
22 ~~extended supervision~~, the notice shall inform the offices and persons under par. (c)
23 1. to 3. that notification of subsequent applications for parole ~~or release to extended~~
24 ~~supervision~~ will be provided only upon request.

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SECTION 70

1 **SECTION 70.** 304.06 (1) (e) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is amended to read:

3 304.06 (1) (e) The ~~earned release review~~ parole commission shall permit any
4 office or person under par. (c) 1. to 3. to provide written statements. The ~~earned~~
5 ~~release review~~ parole commission shall give consideration to any written statements
6 provided by any such office or person and received on or before the date specified in
7 the notice. This paragraph does not limit the authority of the ~~earned release review~~
8 parole commission to consider other statements or information that it receives in a
9 timely fashion.

10 **SECTION 71.** 304.06 (1) (eg) of the statutes, as affected by 2009 Wisconsin Act
11 (28), is amended to read:

12 304.06 (1) (eg) The ~~earned release review~~ parole commission shall permit any
13 person under par. (c) 3. to attend any interview or hearing on the application for
14 parole ~~or release to extended supervision~~ of an applicable inmate and to make a
15 statement at that interview or hearing.

16 **SECTION 72.** 304.06 (1) (em) of the statutes, as affected by 2009 Wisconsin Act
17 (28), is amended to read:

18 304.06 (1) (em) The ~~earned release review~~ parole commission shall promulgate
19 rules that provide a procedure to allow any person who is a victim, or a family
20 member of a victim, of a crime specified in s. 940.01, 940.03, 940.05, 940.225 (1), (2),
21 ~~or (3) or (2)~~ 948.02 (1) or (2), 948.025, 948.06 or 948.07 to have direct input in the
22 decision-making process for parole ~~or release to extended supervision~~.

23 **SECTION 73.** 304.06 (1) (f) of the statutes, as affected by 2009 Wisconsin Act 28,
24 is amended to read:

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plain

1 304.06 (1) (f) ~~The~~ earned release review parole commission shall design and
2 prepare cards for persons specified in par. (c) 3. to send to the commission. The cards
3 shall have space for these persons to provide their names and addresses, the name
4 of the applicable prisoner and any other information the ~~earned release review~~
5 parole commission determines is necessary. The ~~earned release review~~ parole
6 commission shall provide the cards, without charge, to district attorneys. District
7 attorneys shall provide the cards, without charge, to persons specified in par. (c) 3.
8 These persons may send completed cards to the ~~earned release review~~ parole
9 commission. All commission records or portions of records that relate to mailing
10 addresses of these persons are not subject to inspection or copying under s. 19.35 (1).
11 Before any written statement of a person specified in par. (c) 3. is made a part of the
12 documentary record considered in connection with a parole hearing ~~for parole, or~~
13 ~~release to extended supervision~~ under this section, the ~~earned release review~~ parole
14 commission shall obliterate from the statement all references to the mailing
15 addresses of the person. A person specified in par. (c) 3. who attends an interview
16 or hearing under par. (eg) may not be required to disclose at the interview or hearing
17 his or her mailing addresses.

18 **SECTION 74.** 304.06 (1) (g) of the statutes, as affected by 2009 Wisconsin Act 28
19 is amended to read:

20 304.06 (1) (g) Before a person is released on parole ~~or released to extended~~
21 ~~supervision~~ under this subsection, the ~~earned release review~~ parole commission
22 shall so notify the municipal police department and the county sheriff for the area
23 where the person will be residing. The notification requirement under this
24 paragraph does not apply if a municipal department or county sheriff submits to the

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SECTION 74

1 ~~earned release review parole~~ commission a written statement waiving the right to
2 be notified. If applicable, the department shall also comply with s. 304.063.

3 **SECTION 75.** 304.06 (1m) (intro.) of the statutes, as affected by 2009 Wisconsin
4 Act 28, is amended to read:

5 304.06 (1m) (intro.) The ~~earned release review parole~~ commission may waive
6 the 25% or 6-month service of sentence requirement under sub. (1) (b) under any of
7 the following circumstances:

8 **SECTION 76.** 304.06 (1q) (b) of the statutes, as affected by 2009 Wisconsin Act
9 28, is amended to read:

10 304.06 (1q) (b) The ~~earned release review parole~~ commission or the department
11 may require as a condition of parole that a serious child sex offender undergo
12 pharmacological treatment using an antiandrogen or the chemical equivalent of an
13 antiandrogen. This paragraph does not prohibit the department from requiring
14 pharmacological treatment using an antiandrogen or the chemical equivalent of an
15 antiandrogen as a condition of probation.

16 **SECTION 77.** 304.06 (1q) (c) of the statutes, as affected by 2009 Wisconsin Act
17 28, is amended to read:

18 304.06 (1q) (c) In deciding whether to grant a serious child sex offender release
19 on parole under this subsection, the ~~earned release review parole~~ commission may
20 not consider, as a factor in making its decision, that the offender is a proper subject
21 for pharmacological treatment using an antiandrogen or the chemical equivalent of
22 an antiandrogen or that the offender is willing to participate in pharmacological
23 treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

24 **SECTION 78.** 304.06 (1x) of the statutes, as affected by 2009 Wisconsin Act 28,
25 is amended to read:

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1 304.06 (1x) The ~~earned release review~~ parole commission may require as a
2 condition of parole that the person is placed in the intensive sanctions program under
3 s. 301.048. In that case, the person is in the legal custody of the department under
4 that section and is subject to revocation of parole under sub. (3).

5 **SECTION 79.** 304.06 (2m) (d) of the statutes, as affected by 2009 Wisconsin Act
6 (28), is amended to read:

7 304.06 (2m) (d) The ~~earned release review~~ parole commission or the
8 department shall determine a prisoner's county of residence for the purposes of this
9 subsection by doing all of the following:

10 1. The ~~earned release review~~ parole commission or the department shall
11 consider residence as the voluntary concurrence of physical presence with intent to
12 remain in a place of fixed habitation and shall consider physical presence as prima
13 facie evidence of intent to remain.

14 2. The ~~earned release review~~ parole commission or the department shall apply
15 the criteria for consideration of residence and physical presence under subd. 1. to the
16 facts that existed on the date that the prisoner committed the serious sex offense that
17 resulted in the sentence the prisoner is serving.

18 **SECTION 80.** 304.06 (3) of the statutes, as affected by 2009 Wisconsin Act 28,
19 is amended to read:

20 304.06 (3) Every paroled prisoner ~~paroled or released to extended supervision~~
21 remains in the legal custody of the department unless otherwise provided by the
22 department. If the department alleges that any condition or rule of parole ~~or~~
23 ~~extended supervision~~ has been violated by the prisoner, the department may take
24 physical custody of the prisoner for the investigation of the alleged violation. If the
25 department is satisfied that any condition or rule of parole ~~or extended supervision~~

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1 has been violated it shall afford the prisoner such administrative hearings as are
2 required by law. Unless waived by the parolee ~~or person on extended supervision~~,
3 the final administrative hearing shall be held before a hearing examiner from the
4 division of hearings and appeals in the department of administration who is licensed
5 to practice law in this state. The hearing examiner shall enter an order revoking or
6 not revoking parole ~~or extended supervision~~. Upon request by either party, the
7 administrator of the division of hearings and appeals shall review the order. The
8 hearing examiner may order that a deposition be taken by audiovisual means and
9 allow the use of a recorded deposition under s. 967.04 (7) to (10). If the parolee ~~or~~
10 ~~person on extended supervision~~ waives the final administrative hearing, the
11 secretary of corrections shall enter an order revoking or not revoking parole ~~or~~
12 ~~extended supervision~~. If the examiner, the administrator upon review, or the
13 secretary in the case of a waiver finds that the prisoner has violated the rules or
14 conditions of parole ~~or extended supervision~~, the examiner, the administrator upon
15 review, or the secretary in the case of a waiver, may order the prisoner returned to
16 prison to continue serving his or her sentence, or to continue on parole ~~or extended~~
17 ~~supervision~~. If the prisoner claims or appears to be indigent, the department shall
18 refer the prisoner to the authority for indigency determinations specified under s.
19 977.07 (1).

20 **SECTION 81.** 304.06 (3e) of the statutes, as affected by 2009 Wisconsin Act 28,
21 is amended to read:

22 304.06 (3e) The division of hearings and appeals in the department of
23 administration shall make either an electronic or stenographic record of all
24 testimony at each parole ~~or extended supervision~~ revocation hearing. The division
25 shall prepare a written transcript of the testimony only at the request of a judge who

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1 has granted a petition for judicial review of the revocation decision. Each hearing
2 notice shall include notice of the provisions of this subsection and a statement that
3 any person who wants a written transcript may record the hearing at his or her own
4 expense.

5 **SECTION 82.** 304.06 (3m) of the statutes, as affected by 2009 Wisconsin Act 28,
6 is amended to read:

7 304.06 (3m) If the convicting court is informed by the department that a
8 prisoner on parole ~~or extended supervision~~ has absconded and that the prisoner's
9 whereabouts are unknown, the court may issue a capias for execution by the sheriff.

10 **SECTION 83.** 304.071 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
11 is amended to read:

12 304.071 (1) The ~~earned release review~~ parole commission may at any time
13 grant a parole ~~or release to extended supervision~~ to any prisoner in any penal
14 institution of this state, or the department may at any time suspend the supervision
15 of any person who is on probation, or parole, ~~or extended supervision~~ to the
16 department, if the prisoner or person on probation, or parole, ~~or extended~~
17 ~~supervision~~ is eligible for induction into the U.S. armed forces. The suspension of
18 parole, ~~extended supervision~~, or probation shall be for the duration of his or her
19 service in the armed forces; and the parole, ~~extended supervision~~, or probation shall
20 again become effective upon his or her discharge from the armed forces in accordance
21 with regulations prescribed by the department. If he or she receives an honorable
22 discharge from the armed forces, the governor may discharge him or her and the
23 discharge has the effect of a pardon. Upon the suspension of parole, ~~extended~~
24 ~~supervision~~, or probation by the department, the department shall issue an order
25 setting forth the conditions under which the parole, ~~extended supervision~~, or

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SECTION 83

1 probation is suspended, including instructions as to where and when and to whom
2 the person on parole or ~~extended supervision~~ shall report upon discharge from the
3 armed forces.

4 **SECTION 84.** 801.50 (5) of the statutes, as affected by 2009 Wisconsin Act 28,
5 is amended to read:

6 801.50 (5) Venue of an action for certiorari to review a probation, extended
7 supervision, or parole revocation, a denial by the ~~earned release review commission~~
8 a program review committee under s. ~~302.1135 (5)~~ 302.113 (9g) of a petition for
9 modification of a bifurcated sentence, or a refusal of parole shall be the county in
10 which the relator was last convicted of an offense for which the relator was on
11 probation, extended supervision, or parole or for which the relator is currently
12 incarcerated.

13 **SECTION 85.** 809.30 (1) (c) of the statutes, as affected by 2009 Wisconsin Act 28,
14 is amended to read:

15 809.30 (1) (c) "Postconviction relief" means an appeal or a motion for
16 postconviction relief in a criminal case, other than an appeal, motion, or petition
17 under ss. 302.113 (7m), ~~302.1135~~ 302.113 (9g), 973.19, 973.195, 974.06, or 974.07 (2).
18 In a ch. 980 case, the term means an appeal or a motion for postcommitment relief
19 under s. 980.038 (4).

20 **SECTION 86.** 911.01 (4) (c) of the statutes, as affected by 2009 Wisconsin Act 28,
21 is amended to read:

22 911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or
23 rendition; sentencing, granting or revoking probation, modification of a bifurcated
24 sentence under s. ~~302.1135~~ 302.113 (9g), adjustment of a bifurcated sentence under
25 s. 973.195 (1r), ~~release to extended supervision under s. 302.113 (2) (b) or 304.06 (1)~~

ASSEMBLY BILL 879

Subpoenas or
under s. 968.375
arrest warrants
(1r)
or discharge under s. 973.01 (4m); issuance of ~~arrest~~ warrants, criminal summonses,
and search warrants; hearings under s. 980.09 (2); proceedings under s. 971.14 (1)
(c); ^{or} proceedings with respect to pretrial release under ch. 969 except where habeas
corpus is utilized with respect to release on bail or as otherwise provided in ch. 969
and proceedings under s. 165.76(6) to compel provision of a biological specimen for deoxyribonucleic
acid analysis

SECTION 87. 950.04 (1v) (f) of the statutes, as affected by 2009 Wisconsin Act

(28), is amended to read:

950.04 (1v) (f) To have the ~~earned release review parole commission~~ make a
reasonable attempt to notify the victim of applications for parole ^{plain space} or release to
extended supervision, as provided under s. 304.06 (1).

SECTION 88. 950.04 (1v) (g) of the statutes, as affected by 2009 Wisconsin Act

(28), is amended to read:

950.04 (1v) (g) To have reasonable attempts made to notify the victim of
hearings or court proceedings, as provided under ss. 302.113 (9g) ^(g), 302.114 (6),
938.27 (4m) and (6), 938.273 (2), 971.095 (3) and 972.14 (3) (b).

SECTION 89. 950.04 (1v) (gm) of the statutes, as affected by 2009 Wisconsin Act

(28), is amended to read:

950.04 (1v) (gm) To have reasonable attempts made to notify the victim of an
offender who submits a petition petitions for sentence adjustment as provided under
s. 973.195 (1r) (d), an offender who applies for release to extended supervision under
s. 302.113 (2) (b), 302.1135, or 304.06 (1), or an offender who applies for a reduction
under s. 973.01 (4m).

SECTION 90. 950.04 (1v) (nt) of the statutes, as affected by 2009 Wisconsin Act

(28), is amended to read:

ASSEMBLY BILL 879

SECTION 90

1 950.04 (1v) (nt) To attend a hearing on a petition for modification of a
2 **bifurcated** sentence and provide a statement concerning modification of the
3 sentence, as provided under s. ~~302.1135 (4)~~ 302.113 (9g) (d).

4 **SECTION 91.** 973.01 (3d) of the statutes, as affected by 2009 Wisconsin Act 28,
5 is repealed.

6 **SECTION 92.** 973.01 (4) of the statutes, as affected by 2009 Wisconsin Act 28,
7 is amended to read:

8 973.01 (4) ~~EXTENSION~~ NO GOOD TIME; EXTENSION OR REDUCTION OF TERM OF
9 IMPRISONMENT. A person sentenced to a bifurcated sentence under sub. (1) shall serve
10 the term of confinement in prison portion of the sentence without reduction for good
11 behavior. The term of confinement in prison portion is subject to extension under s.
12 302.113 (3) and, if applicable, to reduction under s. 302.045 (3m), 302.05 (3) (c) 2. a.,
13 302.113 (9g), or 973.195 (1r), ~~or adjustment under s. 302.113 (2) (b), 302.1135 (6) (a),~~
14 ~~or 304.06 (1).~~

15 **SECTION 93.** 973.01 (4m) of the statutes, as affected by 2009 Wisconsin Act 28,
16 is repealed.

17 **SECTION 94.** 973.01 (7) of the statutes, as affected by 2009 Wisconsin Act 28,
18 is amended to read:

19 973.01 (7) ~~DISCHARGE~~ NO DISCHARGE. The department of corrections shall may
20 not discharge a person who is serving a bifurcated sentence from custody, control and
21 supervision ~~when~~ until the person has served the entire bifurcated sentence, as
22 ~~modified under sub. (4m) or s. 302.113 (2) (b) or (9h), 302.1135, or 304.06 (1), if~~
23 applicable.

24 **SECTION 95.** 973.031 of the statutes, as affected by 2009 Wisconsin Act 28, is
25 repealed.

ASSEMBLY BILL 879

1 **SECTION 96.** 973.09 (3) (d) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is repealed.

3 **SECTION 97.** 973.195 (1r) (a) of the statutes, as affected by 2009 Wisconsin Act
4 (28), is amended to read:

5 973.195 (1r) (a) An inmate who is serving a sentence imposed under s. 973.01
6 before ~~October 1, 2009~~, for a crime other than a Class B felony may petition the
7 sentencing court to adjust the sentence if the inmate has served at least the
8 applicable percentage of the term of confinement in prison portion of the sentence.
9 If an inmate is subject to more than one sentence imposed under this section, the
10 sentences shall be treated individually for purposes of sentence adjustment under
11 this subsection.

12 **SECTION 98.** 973.195 (1r) (j) of the statutes, as affected by 2009 Wisconsin Act
13 (28), is repealed.

14 **SECTION 99.** 974.07 (4) (b) of the statutes, as affected by 2009 Wisconsin Act 28,
15 is amended to read:

16 974.07 (4) (b) Notwithstanding the limitation on the disclosure of mailing
17 addresses from completed information cards submitted by victims under ss. 51.37
18 (10) (dx), 301.046 (4) (d), 301.048 (4m) (d), 301.38 (4), 302.105 (4), 304.06 (1) (f),
19 304.063 (4), 938.51 (2), 971.17 (6m) (d), and 980.11 (4), the department of corrections,
20 the ~~earned release review~~ parole commission, and the department of health services
21 shall, upon request, assist clerks of court in obtaining information regarding the
22 mailing address of victims for the purpose of sending copies of motions and notices
23 of hearings under par. (a).

24 **SECTION 100.** 976.03 (23) (c) of the statutes, as affected by 2009 Wisconsin Act
25 (28), is amended to read:

ASSEMBLY BILL 879

976.03 (23) (c) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by 2 certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to a judge, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, ~~earned release review parole~~ commission, warden or sheriff may also attach such further affidavits and other documents in duplicate as he, she or it deems proper to be submitted with the application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the governor to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

SECTION 101. 977.05 (4) (jm) of the statutes, as affected by 2009 Wisconsin Act (28), is amended to read:

977.05 (4) (jm) At the request of an inmate determined by the state public defender to be indigent or upon referral of the department of corrections a court under s. ~~302.1135 (10)~~ 302.113 (9g) (j), represent the inmate in proceedings for modification of a bifurcated sentence under s. ~~302.1135~~ before the earned release review commission 302.113 (9g) before a program review committee and the sentencing court, if the state public defender determines the case should be pursued.

SECTION 102. Nonstatutory provisions.

(1) This act applies to persons who are sentenced on or after December 31, 1999.

(END)

Budget
Init.
App

9311 Initial applicability; Corrections
INSERT INITAPP

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0829/?ins

.....

INSERT INITAPP:

(1) SENTENCE ADJUSTMENT. The treatment of sections 15.01 (2), 15.06 (6), 15.145 (1), 17.07 (3m), 20.410 (2) (title) and (a), 20.923 (4) (b) 6., 230.08 (2) (pd), 301.03 (3), 301.048 (2) (am) 3., 301.21 (1m) (c) and (2m) (c), 302.042, 302.045 (1), (2) (d), (3), and (3m) (d), 302.05 (2), (3) (b), (c) 1., 2. (intro.), and 3., and (d), 302.11 (1g) (b) (intro.) and 2., (c), and (d), (1m), and (7) (c), 302.113 (1), (2) (a), (b), and (c), (3) (d) and (e), (7), (9) (am), (at), (b), and (c), (9g), and (9h), 302.1135, 302.114 (9) (am) and (c), 304.01 (title), (1), (2) (intro.), (b), (c), and (d), 304.06 (title), (1) (b), (bg), (bk), (bn), (br), (c) (intro.), (d) 1., 2., 3m., and 4., (e), (eg), (em), (f), and (g), (1m) (intro.), (1q) (b) and (c), (1x), (2m) (d), (3), (3e), and (3m), 304.071 (1), 801.50 (5), 809.30 (1) (c), 911.01 (4) (c), 950.04 (1v) (f), (g), (gm), and (nt), 973.01 (3d), (4), (4m), and (7), 973.031, 973.09 (3) (d), 973.195 (1r) (a) and (j), 974.07 (4) (b), 976.03 (23) (c), and 977.05 (4) (jm) of the statutes, the renumbering and amendment of section 302.05 of the statutes, and the creation of sections 302.05 (1) (am) 1. and 2. and (b) of the statutes first apply to a person sentenced on December 31, 1999.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRE-4097/ldn
PJH:nwn:md

February 23, 2010

PJH:WLj:

Date

Katie

2009 Wisconsin Act 28 (the Budget Bill)

sentencing

Please review this draft to ensure that it is consistent with your intent. It is my understanding that your intent is to repeal the "good time" provisions that were enacted in the budget bill and to stop the accumulation of good time credit on the effective date of this bill. It is my understanding that you do not want people who were sentenced under the good time provisions to accrue any additional good time after this bill goes into effect. To that end, I have made the changes in this bill applicable to persons who were sentenced under the budget sentencing provisions and to those whose sentences were affected by the budget sentencing provisions (i.e., persons sentenced under Truth in Sentencing).

As we discussed, repealing the "good time" provisions and making that repeal apply to people who were sentenced before the effective date of this draft may raise constitutional problems. It could be argued that a person who was sentenced under the good time scheme is entitled to continue to earn good time throughout his or her sentence. This may be particularly problematic in the case of a person who accepted a plea bargain based, in part, on the sentence he or she expected to serve.

If you have any questions or concerns or would like to discuss this draft further, please let me know.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0829/P1dn
PJH:wlj:ph

January 14, 2011

Katie:

Please review this draft to ensure that it is consistent with your intent. It is my understanding that your intent is to repeal the sentencing provisions that were enacted in 2009 Wisconsin Act 28 (the budget bill) and to stop the accumulation of "good time" credit on the effective date of this bill. It is my understanding that you do not want people who were sentenced under the good time provisions to accrue any additional good time after this bill goes into effect. To that end, I have made the changes in this bill applicable to persons who were sentenced under the budget bill's sentencing provisions and to those whose sentences were affected by the budget bill's sentencing provisions (i.e., persons sentenced under Truth in Sentencing).

As we discussed, repealing the budget bill's provisions and making that repeal apply to people who were sentenced before the effective date of this draft may raise constitutional problems. It could be argued that a person who was sentenced under the good time scheme is entitled to continue to earn good time throughout his or her sentence. This may be particularly problematic in the case of a person who accepted a plea bargain based, in part, on the sentence he or she expected to serve.

If you have any questions or concerns or would like to discuss this draft further, please let me know.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

Hurley, Peggy

From: Kisiolek, Katrina L - DOA [Katrina.Kisiolek@wisconsin.gov]

Sent: Wednesday, January 26, 2011 4:52 PM

To: Hurley, Peggy

Cc: Steinmetz, Jana D - DOA; Wavrunek, Leah J - DOA

Subject: sentencing

Hi Peggy,

Leah and I went over the draft and compared notes and came up with a few things to ask you about.

They are mostly very picky so feel free to ignore them if you think they're irrelevant... we tried to err on the side of being over-inclusive. Feel free to call either of us to discuss anything.

- 1- 302.05(1)(b) was (c) in earlier law- page 8 lines 9 and 10 of the draft
- 2- The order was the court order in earlier law- page 13 line 4
- 3- A criterion was the criteria in earlier law- page 15 line 1- doesn't make sense to create gaps
- 4- A hearing was a hearing date in earlier law- page 16 line 21- doesn't make sense to create gaps
- 5- We saw different references in earlier law- page 18 line 16
- 6- Parole interview for prisoners was parole interviews- page 19 and 20 lines 22, 1 and 5
- 7- Third degree sexual assault was added from prior law, but was it tied to sentencing?- page 21 line 18
- 8- Did separate legislation affect section 84 on page 28...it looks different?
- 9- Bifurcated was also included in the last line of section 88- page 29 line 17

Thanks,
Katie

Katrina Kisiolek
266-2213

yes- the
DNA was
put in by
OA Ad 24

ISSUANCE OF
SENTENCE
WRITING BY
AD 24

I think
you're right -
not part of
TIS changes

302.11 35
now going to
revise sent to
ad 302.11 35

Leah H/c

70370

To Warren Weinstein: folks sentenced
L/A Oct 1, 2009 to eff date will have
a due process claim. 264-9444

So: People sentenced L/A 10-1-09
eff. date should be able to keep those
sentences

↔ Risk reduction sections first apply
to persons sentenced on the
eff date of the subsection.
(people can keep their risk reduction
sentences)

initially apply to people
sentenced on eff. date

t/c to Warren Weinstein: he
recommends going with

"First applies to people sentenced
on the effective date."
~~But does not~~

first applies to people sentenced
back in Oct ^{Dec 31, 1999} 2009 but does not
= losing P^{AT} days off earned 5/1
Oct 1 2009 to eff. date

t/c with Leah - costs/bens to both
approaches. for IP2, leave eff
date as is.

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

0594
0830

DeL

Peterson

Adam @ Kauter

65 719

69650

John @ Hixson

Guardum's
to

and

AB

.15 =
modern

283

Sarah @ Jauch

63 510

SS 251 - fiscal

Cathy Friedl

Dave @ Goggs 62500

re: taking DNA from
arrested

(4) Standards

(a) LEO & TLEOs

(b) Jail Officers

(c) Juvenile Detention Officers

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

-2267
-a 0572

do another
a w/o
exceptions

Beth -
yes

OK of
11:30 - R, Dec 3
279 0355 Cyn this

Tues Dec.
Fri - morn.

M IIII
D (I)
M I
D II
T IIII
F II
S III

Holly
Charlotte

Boyle

Chantix

new scrip + refill
brand new scrip

12/22/66
cr

one msg

3
Tony @
Shilling

Ann @ Boyle's

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

343.30 (1g) (L) 5.

t/c to Leah:

3/21/35 p.14

- maintain def of extraordinary health condition but go back to pre-Act 28 procedure

- keep Act 28 see secs
remove s. 43

for anyone sentenced
b/t 10-1-09 & eff date, PAT
they can keep what they
earned but no more after
eff date.

they petition the ct for early
release due to time earned PAT

can't even what
keep stay
Sentenced) before ~~10-01-10-1-09~~
NO PAT

People who ^{earn PAT may}
~~can~~ ^{could} petition ct
for ^{early} release to ext sup

so: recreate something like

302.113 (2) (c) for these people